



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/832,292

04/10/2001

Alexey Ryazanov

601-1-098CIP

8327

23565

7590

08/23/2005

KLAUBER & JACKSON
411 HACKENSACK AVENUE
HACKENSACK, NJ 07601

EXAMINER

HUTSON, RICHARD G

ART UNIT

PAPER NUMBER

1652

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,292

Applicant(s)

RYAZANOV, ALEXEY

Examiner

Richard G. Hutson

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5,14-17 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 49 is/are allowed.
- 6) ☒ Claim(s) 15-17 is/are rejected.
- 7) ☒ Claim(s) 4 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/2005 has been entered.

Applicants amendment of claims 4 and 16 and the addition of new claim 49, in the paper of 6/3/2005, is acknowledged and has been entered. Claims 4, 5, 14-17 and 49 are at issue and are present for examination.

Applicants' arguments filed on 6/3/2005, have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

Priority

The granting of applicants claim of priority for the DNA sequence of SEQ ID NO: 34 to the instant application, filed 4/10/2001, remains proper, as there is no support for this sequence in application Serial No. 09/623,131.

Applicants continued arguments traversing the granting of priority to only the instant application are acknowledged, however, not found persuasive. Possession of a

Art Unit: 1652

fragment of SEQ ID NO: 34 does not put one in possession of the full length sequence of SEQ ID NO: 34.

Claim Objections

Claim 4 , 14 and 15 are objected to because of the following informalities:

Claim 4 (claims 14 and 15 dependent fom) in subpart b recites "... DNA sequences of subpart (a)." This should be "... DNA sequence of subpart (a)."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 16 and 17 remain rejected under 35 U.S.C. 112, first paragraph, written description, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

This rejection was stated in the previous office action as it previously applied to previous claims 4 and 14-17. In response to this rejection, applicants have amended claims 4 and 16 and argue this rejection as it applies to the amended claims.

Applicants traverse the rejection on the basis that the specification discloses human and mouse heart alpha kinase and provides a comparison of these polypeptide sequences with other such alpha kinases, including as to naturally occurring allelic variants.

Applicants complete argument is acknowledged, however, found nonpersuasive on the following basis. The rejected claims continue to recite that the claimed nucleic acid must encode a "mammalian alpha kinase" and is selected from "DNA sequences capable of encoding the amino acid sequence encoded by the DNA sequences of subpart (a). The apparent plurality of those DNA sequences of claim 16, subpart (b) leads to the maintenance of the present rejection for the reasons stated above and previously.

Claim 15 is further maintained in the rejection because claim 15 as claimed reads on a host cell within a transgenic animal, and applicants have not described such transformed host cells. Insertion of "isolated" before "transformed" would overcome this specifically referred to problem.

Applicant is referred to the revised guidelines concerning compliance with the written description requirement of U.S.C. 112, first paragraph, published in the Official Gazette and also available at www.uspto.gov.

Claims 15, 16 and 17 remain rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an isolated nucleic acid encoding a mammalian alpha kinase, comprising the DNA sequence of SEQ ID NO: 34, does not

Art Unit: 1652

reasonably provide enablement for any nucleic acid encoding a mammalian alpha kinase and is capable of encoding an amino acid sequence of the DNA sequences of the DNA sequence of SEQ ID NO:34. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

This rejection was stated in the previous office action as it previously applied to previous claims 4 and 14-17. In response to this rejection, applicants have amended claims 4 and 16 and argue this rejection as it applies to the amended claims.

Applicants traverse this rejection, as the above, on the basis that the specification discloses human and mouse heart alpha kinase and provides a comparison of these polypeptide sequences with other such alpha kinases, including as to naturally occurring allelic variants.

Applicants complete argument is acknowledged, however, found nonpersuasive on the following basis. The rejected claims continue to recite that the claimed nucleic acid must encode a "mammalian alpha kinase" and is selected from "DNA sequences capable of encoding the amino acid sequence encoded by the DNA sequences of subpart (a). The apparent plurality of those DNA sequences of claim 4, subpart (b) and claim 16 subpart (b) leads to the maintenance of the present rejection for the reasons stated above and previously.

Claim 15 is further maintained in the rejection because as discussed above, claim 15 as claimed, reads on a host cell within a transgenic animal, and applicants have not enabled such transgenic animals and the encompassed transformed host

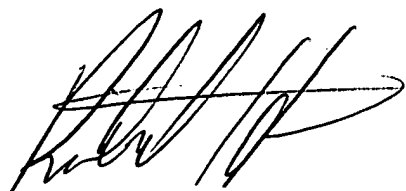
Art Unit: 1652

cells. Insertion of "isolated" before "transformed" would overcome this specifically referred to problem.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Hutson whose telephone number is (571) 272-0930. The examiner can normally be reached on 7:30 am to 4:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. G. Hutson', with a stylized flourish at the end.

Richard G Hutson, Ph.D.
Primary Examiner
Art Unit 1652

Application/Control Number: 09/832,292
Art Unit: 1652

Page 7

rg
8/19/2005